



U.S. Department of Justice

*United States Attorney  
Eastern District of New York*

CSK  
F.#2009RO1998

271 Cadman Plaza East  
Brooklyn, New York 11201

July 18, 2012

By ECF

The Honorable Steven M. Gold  
Chief United States Magistrate Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Chaim Lebovits, CR 11-134  
(S-2)(SJ)(SMG)

Dear Chief Magistrate Judge Gold:

The government respectfully submits this letter in opposition to the motion of defendant Avigdor Gutwein to strike the government's letter to the Court of July 17, 2012. Gutwein argues that surreply papers were not authorized by the briefing schedule and that the letter should therefore be stricken. However, Gutwein, in his Reply papers, raised new issues for the very first time. In particular, Gutwein, for the first time in his Reply papers, argued that: (1) the indictment itself failed to properly allege that the defendants' misrepresentations were directed to the nature of the bargain and that the indictment should therefore be dismissed for that reason (Gutwein had previously moved to dismiss the indictment based solely upon the allegations of paragraph 8 of the indictment); and (2) the Leon good faith defense is not available in Title III suppression motions. The government had a right to respond to the new arguments. The government does not object if Gutwein has time, after oral argument, to respond to the July 17 letter.

Accordingly, the government respectfully requests that Gutwein's motion to strike be denied.

Thank you for your attention.

Respectfully submitted,

Loretta E. Lynch  
United States Attorney  
Eastern District of New York

By: \_\_\_\_\_  
Charles Kleinberg  
Assistant U.S. Attorney  
(718) 254-6012